



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO KROGER LIMITED PARTNERSHIP I Registration Number 52183

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §10.1-1309 and §10.1-1316, between the Air Pollution Control Board and Kroger Limited Partnership I, for the purpose of resolving certain alleged violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Air Pollution Control Law" means Va. Code § 10.1-1300 *et seq.*
3. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
4. "Kroger" means Kroger Limited Partnership I, a partnership registered in the Commonwealth of Virginia and its general partners.
5. "Facility" means the Kroger store located at 14111 Midlothian Turnpike in Chesterfield County, Virginia.
6. "Director" means the Director of the Department of Environmental Quality.

7. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
8. "Order" means this document, also known as a Consent Order.
9. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
10. "Regulations" means the Commonwealth of Virginia State Air Control Board Regulations for the Control and Abatement of Air Pollution.

SECTION C: Findings of Fact and Conclusions of Law

1. Kroger operates a fuel center/gasoline dispensing operation located at 14111 Midlothian Turnpike in Chesterfield County, Virginia. The Facility is a true minor stationary source and is subject to Emission Standards for Petroleum Liquid Storage and Transfer Operations under 9 VAC 5-40-5220 of the Regulations.
2. On June 14, 19, and 22, 2007, DEQ Piedmont Regional Office (PRO) staff conducted investigations/inspections of Kroger. DEQ PRO staff observed that Stage I and Stage II emission control systems were bypassed, which caused emissions to be vented to the atmosphere uncontrolled during ozone season within a volatile organic compound (VOC) control area. The following violations were noted as a result:
 - a. VOC emissions from the Facility's operations were not controlled so as to prevent VOCs from becoming airborne, as required by 9 VAC 5-40-5220 E. and F.;
 - b. VOC emissions were not minimized, as required by 9 VAC 5-40-20 F;
3. During the post inspection meeting on June 14, 2007, DEQ PRO staff gave the Facility a 24 hour deadline to re-install the approved control equipment devices to control the VOC emissions and test the system to verify the control system was certified.
4. On June 14, 2007, PRO staff was notified by Kroger that the approved control equipment devices were installed.
5. On June 22, 2007, testing was performed which verified compliance.
6. On August 2, 2007, DEQ issued Notice of Violation ("NOV") Number 07-07-PRO-403 regarding the above-described violations.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1316(C), orders Kroger, and Kroger voluntarily agrees, to pay a civil charge of \$6,662 within 30

days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Payment shall include the Federal Tax Identification Number for the Facility.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Kroger, for good cause shown by Kroger, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves the violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Kroger by DEQ on August 2, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Kroger as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Kroger admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Kroger consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kroger declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Kroger to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kroger shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Kroger shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kroger shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kroger. Notwithstanding the foregoing, Kroger agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Kroger. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kroger from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Kroger voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of February 19, 2008.

Gerard Seeley Jr.
Gerard Seeley Jr., Regional Director
Department of Environmental Quality

Kroger voluntarily agrees to the issuance of this Order.

By: Bruce M. Gack

Date: February 5, 2008

State of Ohio
County of Hamilton



The foregoing document was signed and acknowledged before me this 5th day of
February, 2008, by Bruce M. Gack, who is
(name)
Vice President of KRGP Inc., an Ohio corporation, general partner of Kroger
(title)
Limited Partnership I, on behalf of the Partnership.



CARRIE A. CORTOLILLO
Notary Public, State of Ohio
My Commission Expires
June 15, 2009

Carrie A. Cortolillo
Notary Public

My commission expires: June 15, 2009.